

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

RAMON ARMAS BORROTO, JR.,

Plaintiff,

vs.

Case No. 5:04cv165-RH/WCS

OFFICER McDONALD, et al.,

Defendants.

_____/

ORDER

Before the Court is a letter from Donna Kent, the individual who was recently served with process in this prisoner civil rights action. Doc. 52. In the letter, Donna Kent identifies herself as not being the Nurse "Jane Doe" Donna Kent that Plaintiff intended to sue because this individual has worked for the past 11 years for Peace River Center in Bartow, Florida. Doc. 52. Because this person is obviously not the person Plaintiff intended to sue, the letter is construed as a notice of unexecuted return of service.

At this point, Plaintiff is still incarcerated and lacks the resources necessary to locate this missing Defendant. Therefore, prior to opening this case up to discovery, one final attempt will be made to facilitate service on Plaintiff's behalf. Should this

attempt also be ineffective, Plaintiff will have the obligation to find this Defendant on his own through discovery. Discovery at this point, however, is premature.

Judicial notice is taken of another case, 5:04cv144, which is currently being litigated in this Court, where the named Defendant is Nurse D. Kent. Doc. 12 of that case. She was a nurse at Washington Correctional Institution in July of 2003. *Id.* In this case, Defendant Jane Doe Kent is alleged to be a registered nurse who was employed at Washington Correctional Institution during November and December of 2002. Doc. 19 of this case. It is highly likely that this is the same Defendant as was named in case 5:04cv144.

Service was returned unexecuted in case 5:04cv144 in November of 2004 with the notation that Nurse Donna Kent no longer worked for the Department of Corrections. Doc. 21 of case 5:04cv144. Because no known forwarding address was provided, an address was obtained for the Defendant and a subsequent service order was entered. Doc. 22. However, that service effort was also unsuccessful and was returned as undeliverable. Doc. 25. Eventually, service was successful after being facilitated by personnel from the Department of Corrections Central Office. That same procedure will be followed in this case in a last effort to direct service for Plaintiff.

The Clerk of Court is directed to provide a copy of this Order to the United States Marshal's Service and to the Deputy General Counsel for the Department of Corrections. In accordance with the standard practice utilized in this Court, it is anticipated that the Deputy General Counsel for the Department will be able to facilitate service on Defendant Kent. A response to this order shall be filed by the deadline

provide indicating whether service can be facilitated or whether no assistance is possible.

Accordingly, it is

ORDERED:

1. The letter filed by Donna Kent, doc. 52, is construed as an unexecuted return of service.

2. The Clerk shall provide a copy of Donna Kent's unexecuted return of service to Plaintiff.

3. The Clerk of Court shall forward a copy of this order to Susan A. Maher, the Deputy General Counsel for the Department of Corrections, and a courtesy copy of this order to the United States Marshal's Service.

4. The Deputy General Counsel for the Department of Corrections shall have until **October 19, 2005**, in which to either: (1) inform the United States Marshal in confidence of the present location of Defendant Nurse Donna Kent, (2) make an appearance on her behalf, or (3) advise the Court that neither alternative is possible.

5. Should the Deputy General counsel obtain an address for Defendant Kent and provide that to the United States Marshal's Service, a notice to that effect shall be filed with the Clerk of Court on or before **October 19, 2005**.

6. Should Counsel for the Department be *either* unable to locate the Defendant or obtain her consent such that no notice of appearance can be entered on behalf of Defendant Kent, the Deputy General Counsel shall file a notice providing that clarification to the Court on or before **October 19, 2005**.

7. As a courtesy, the Clerk of Court shall provide a copy of this Order to Donna Kent, using the address provided on the unexecuted return of service, doc. 52.

8. The Clerk shall return this file to the undersigned no later than October 19, 2005.

DONE AND ORDERED on September 21, 2005.

s/ William C. Sherrill, Jr.
WILLIAM C. SHERRILL, JR.
UNITED STATES MAGISTRATE JUDGE